IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 129 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VALAND RAMANLAL VADILAL - Appellant(s)
Versus
SHAH NAVINCHANDRA CHIMANLAL - Defendant(s)

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Appearance :
MR PRAKASH K JANI for Appellant(s) : 1,
MR VC DESAI for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 15/01/2007

ORAL JUDGMENT

1. The appellant – defendant, who was inducted as tenant under Exh.27 at the monthly rate of Rs.15/- somewhere in

the year 1967, lowered down the level of the shop, as alleged by the plaintiff, by 3.1/2 feet. Being aggrieved by this act of the defendant - tenant, the plaintiff filed the suit for declaration that the action of the defendant was absolutely illegal and the respondent be restrained from making any further construction in the property. The defendant appeared before the court and submitted that in view of big holes in the wall between the suit premises and the adjoining neighbour's wall, rats were coming from his shop to the shop of the defendant, therefore, he was required to lower down the level of his own shop. He, however, submits that the suit was not maintainable and that such injunction could not be granted, because, the subject matter would fall within the jurisdiction of Rent Controlling Authority.

2. After recording the evidence and hearing the parties, the trial court dismissed the suit holding that lowering down of the floor by 1.75 feet (as reported by the Court Commissioner) would not amount to material alteration and this act on the part of the defendant would give no cause of action to the plaintiff to file a suit, because, neither there was any wastage nor any alienation.
3. The first appellate court, placing reliance upon the

judgment of the Supreme Court in the matter of Manmohandas Shah Vs. Vishnudas, reported in A.I.R. 1967 643, held that the action of the defendant was illegal, it was causing damage to the property. The first appellate court, accordingly, restrained the defendant from raising any further construction in the suit premises.

4. After arguing at length, learned counsel for the appellant submits that the appellant be allowed to restore the shop to its original position within a period of two months and if he does not do so, the judgment and decree passed by the first appellate court may be allowed to stand.

5. Mr.Desai, learned counsel for the respondent submits that if within a period of two months from today, the defendant restores the position of the shop to its original condition, he would not have any grievance against the defendant, but, in case, the defendant does not do so, the judgment and decree passed by the appellate court must stand.

6. The appeal is hereby disposed of with a direction that on or before 19/3/2007, the appellant – defendant shall restore the rented shop - demised premises, to its original position. After completing the same, he shall make an application to the trial court that in accordance with the

understanding and undertaking given to the Court, he has restored the possession of the suit shop to its original position, the court, after receiving the application shall issue notice to the plaintiff and shall appoint a Court Commissioner to obtain a report of the spot inspection. If the court comes to the conclusion that the defendant has stood to his word and has restored the possession of the rented shop to its original condition, then, the suit shall stand dismissed, in view of the submissions made by Mr.Desai, learned counsel for the respondent, but if the court records a finding that the appellant has not restored the rented shop to its original condition, then, in view of the said finding, this appeal shall stand dismissed. The appeal stands disposed of accordingly. No costs.

(R.S. GARG, J.)

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